IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 398 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

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HARSHAD ALIAS LALO DINESHBHAI BAROT - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YV BRAHMBHATT for Appellant
MR AJ DESAI, ADDL. PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 27/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The challenge in this appeal is to the judgement and order dated 31st March, 1999 rendered by the learned Additional Sessions Judge, Court No.9, Ahmedabad City, in Sessions Case No.181 of 1998, whereby the appellant has been convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay fine of Rs.1000/- and in default to undergo rigorous imprisonment for 15 days. The accusation that led to the trial was that the appellant had on 29.12.1997 at about 22:00 hours at night, committed the murder of one Niranjan Sitaram (hereinafter referred to as the deceased) by inflicting knife blows on the vital parts of his body.

2. The prosecution case is that the first informant Ramchandra Sitaram Devrukhkar had lodged a complaint with the Amraiwadi Police Station on 29.12.1997 stating that he had a garage near Khokhra bus stop by the name of Aai Shri Bhavani Auto Parts. He used to close down his garage at about 8 to 8:30 p.m. every day. Thereafter, after having his meals, he would drive his auto-rickshaw No. G.R.H.-2728. On the said day also (i.e. on 29.12.1997), as usual, he had closed his garage at about 8:30 p.m. and had come home. After taking dinner, he went to fetch a mattress belonging to his uncle from the shop of one Mansuri, which was located next to his house and went to deliver the same at

his uncle’s house at Adarsh Tenements. His uncle upon examining the mattress found that it has not been filled properly, hence, he told him to return the same. He, therefore, went to return the mattress to Mansuri, however, his shop was closed so he was going to keep the mattress at his house, whereupon, a boy named Bharat, who was a resident of their chali, came and told him to immediately go to the L.G. Hospital. He, therefore, inquired from him as to why he should go to L.G. Hospital. Whereupon Bharat told him that one Barot, resident of Gujarat Housing Board, had inflicted knife blows on his younger brother Niranjan, hence, he has been taken to the hospital for treatment and that he should immediately go to the hospital. He, therefore, took his sister Surekha and one Mangabhai Choudary who lived in the neighbourhood, along with him in his rickshaw and went to the hospital. At the hospital he saw that his brother had been admitted in the trauma ward for treatment. He had been inflicted four fatal blows with a sharp cutting weapon; one on his chest, another on his abdomen just below the chest near the liver, one on the left side of the abdomen and one on the elbow of his left hand, blood was oozing from the injuries and he was unconscious. Upon his asking his brother Manoj about the incident, he was told that at about 10 o’clock at night, on the road opposite Sarita Travels of Khokhra Circle, Harshad Dineshbhai Barot resident of Gujarat Housing

Board had, out of vengeance in connection with the heated exchange they had with each other on the previous night, inflicted knife blows on Niranjan as a result of which a major blood vessel had been cut. That, he along with other persons, had brought Niranjan to the Hospital for treatment. He, thereafter, had sent his brother home to fetch his parents. In the meanwhile the police officer had reached the hospital and at about the same time, the doctor informed him that his brother Niranjan had expired at about 23:30 hours.

3. It is further the case of the prosecution that, under the instructions of the Chief Medical Officer, L.G. Hospital, a vardhi was given by Head Constable Balabhai Vasabhai on 29/12/1997 at 22.45 hrs. informing that one patient by the name of Niranjan Sitaram Devrukhkar, who had been injured due to stab wounds inflicted on his chest and abdomen by the opposite side, a person named Barot, had been brought for treatment by his brother Manoj Sitaram and had been admitted in the Trauma Ward. Pursuant to the vardhy, Shri Ahmedbhai Babubhai Kureshi, Police Inspector, Amraiwadi Police Station who is the investigating officer in the present case, immediately went to the L.G. Hospital. When he reached the hospital, the Medical Officer who was treating the deceased, declared him dead. One Ramchandra Sitaram Devrukhkar, a brother of the deceased, was present at the hospital hence; the investigating officer

recorded the FIR (Exh.10) as narrated by him and the same was registered as Amraiwadi Police Station I C.R.No.760/97. Thereafter, he gave instructions to hold inquest and to send the corpse for post mortem examination and proceeded to the scene of offence. Inquest on the dead body was held at 23:40 hours and a panchnama to that effect was drawn at Exh.14 and the dead body was sent for post mortem examination. The investigating officer drew the panchnama of the scene of offence at Exh.29. Manoj Sitaram showed the scene of offence and samples of blood stained earth and control earth were collected and sealed in the presence of panchas. Pair of slippers were also found at the scene of offence, which were also seized.

4. As the offence in question was a visitation offence, the investigating officer informed his higher officer, as well as the police control room. He, thereafter recorded statements of witnesses near the scene of offence and carried out search for the accused. The accused was traced out near his house and was arrested in connection with this offence on 30.12.1997 at 13:15 hours. As it appeared that the accused had washed the bloodstains off from his clothes, the clothes that he was wearing were seized vide panchnama Exh-17.

5. Thereafter the accused expressed his willingness to show where he had concealed the knife used in the commission of the offence.

Therefore, panchas were called and accused led the investigating officer and the panchas to the pillar on the left side of the gate of the Municipal Muster Station near Hanumanji temple at Khokhra on which he had kept the knife. The knife was seized under panchnama Exh.31.

6. In the meanwhile the post mortem examination of the deceased was carried out by Dr. Jayendra Ratilal Modi. The post-mortem report is produced at Exh.23. The pant and underwear worn by the deceased at the time of the incident were produced by police constable Jitendrakumar Atmaram of Amraiwadi Police Station, and a panchnama to that effect was drawn vide Exh.15, whereas the remaining clothes worn by the deceased at the time of the incident were produced by his brother Ramchandra and the custody of the same was taken over under Panchnama, Exh.16.

7. The blood stained clothes of the deceased as well as the accused, the knife (muddamal article No.8), the samples of earth collected from the scene of offence and the slippers recovered from the scene of offence were sent to the Forensic Science Laboratory for analysis. Upon receipt of the Analysis and Serological reports from the Forensic Science Laboratory, the same were kept in the investigation file. After completion of investigation, charge sheet was submitted against the accused for the offences punishable

under section 302 of the Indian Penal Code and section 135 of the Bombay Police Act in the court of the learned Metropolitan Magistrate, Court No.7 in Criminal Case No.420 of 1998. As the offence was exclusively triable by Court of Sessions, the learned Metropolitan Magistrate vide order dated 12.6.1998 committed the case to the Court of Sessions for trial, where it was registered as Sessions Case No.181 of 1998.

8. The learned Additional Sessions Judge to whom the case was made over for trial, framed charges against the accused for the offences punishable under Section 302 of the Indian Penal Code and Sec 135(1) of the Bombay Police Act.

9. The charges were read over and explained to the accused, who pleaded not guilty to the charge and claimed to be tried.

10. To prove the culpability of the accused, the prosecution examined the following nine witnesses and relied upon their oral testimonies.

[1] Ramchandra S.Deorukhkar, Exh.9
[2] Manoj S.Deorukhkar, Exh.11
[3] Ravindra Rameshbhai Pavar, Exh.12
[4] Anil Dhirubhai Rathod, Exh.13
[5] Balkishanbhai Babulal Prajapati, Exh.18
[6] Dr.Jayendra Ratilal Modi, Exh.22
[7] Aababhai Eknathbhai Tapodhan, Exh.24

[8] Dr.Shakib Ahmed Jamilhussain Masu, Exh.26
[9] Ahmedbhai Bapubhai Kureshi, Exh.28.

11. The prosecution also produced and proved the following documentary evidence in support of its case.

[1] Inquest Panchnama, Exh.14
[2] Panchnama of clothes of the deceased, Exhs.15 and 16.
[3] Panchnama of Scene of Offence, Exh.29.
[4] Panchnama of physical condition of the accused, Exh.17
[5] Discovery Panchnama, Exh.31
[6] Injury Certificate of the deceased Exh.31
[7] Post Mortem Report, Exh.23
[8] F.S.L. Report, Exh.34

12. After recording the evidence adduced by the prosecution, the trial Court explained the circumstances appearing against him to the accused and recorded his further statement under Section 313 of the Code of Criminal Procedure (“the Code” for short). The case of the accused was that of total denial. He neither examined any witness nor stepped into the witness box.

13. Out of the 9 witnesses, it was claimed that witness No.3 and 4 were eyewitnesses. However, witness No.4 resiled from the statements made during investigation. The Trial Court placing reliance on the evidence of PW3 recorded

conviction and imposed sentence as aforesaid which has given rise to the present appeal under section 374 of the Code.

14. Learned Advocate Mr. Y. V. Brahmbhatt has vehemently assailed the impugned judgement and order. It was submitted that the evidence of PW1 and PW2 was in the nature of hearsay, as neither of the said witnesses were eyewitnesses. It was pointed out that insofar as PW1 is concerned, his knowledge of the incident was based on the information received from one Bharat and from PW2. Bharat has not been examined by the prosecution, whereas, PW2 in his deposition does not state the source of his information. Hence, the evidence of both these witnesses is required to be discarded.

15. The learned Advocate further submitted that the trial Court had based the conviction solely on the evidence of the so called eye witness PW3 Ravindra Rameshbhai Pawar, however, the said witness is a got up witness and his evidence is required to be discarded. It was submitted that the conduct of the said witness was most unnatural and therefore cannot be believed. It was pointed out that though it is the case of the prosecution that the said witness was an eyewitness, he did not try to save the deceased, though he is a neighbour and had relations with the deceased; he did not inform PW2 about the identity of the assailant; he did not assist PW2 in any manner, nor did he

accompany him while taking the deceased to the hospital; though he was present at the scene of offence when PW2 came there, he is not named in the FIR; he did not inform the police despite the fact that the police chowky is situated at a distance of barely 50 feet from the scene of offence; though he returned home immediately after the incident, he did not inform either his own family members or the family members of the deceased regarding the incident; he did not talk about the incident at his work place when he went to work on the next day; he was taken to the Police Station for recording his statement by PW2.

16. The next contention raised by the learned Advocate for the appellant was that the only other evidence against the accused was in the nature of the discovery panchnama Exh.31, however, the said discovery was no discovery in the eye of law. It was contended that the panch witness PW7, Ambabhai Eknathbhai was a highly interested witness who had good relations with the complainant and as such no reliance can be placed on his evidence.

17. It was urged that neither the evidence of the so called eyewitness nor the discovery panchnama were reliable and trustworthy, and as such the prosecution has failed to establish the charge against the appellant. It was accordingly prayed that the conviction which was based upon the said evidence be set aside

and the appellant be acquitted of the charges levelled against him.

18. In support of his contentions, reliance had been placed upon the following decisions :

[a] The decision of the Supreme Court in the case of ***Din Dayal v. Raj Kumar alias Raju and others***, (1999) CRI.L.J. 467.

[b] The decision of the Supreme Court in the case of ***Alil Mollah and another v. State of West Bengal***, (1996) CRI.L.J. 3842.

[c] The decision of the **Rajasthan High Court in the case of *Mahendra Singh and others*** *v. State of Rajasthan*, (1998) CRI.L.J. 1314.

[d] The decision of the Supreme Court in the case of ***State of Punjab v. Pritam Singh and others***, AIR 1977 SC 2005.

[e] The decision of the Bombay High Court in the case of ***Ganpat Kisan Giri alias Nadiwala v. State of Maharashtra***, (1995) CRI.L.J. 792.

19. Mr.A.J.Desai, learned Additional Public Prosecutor has supported the impugned judgement and order. It was submitted that there was ample evidence on record to connect the accused with the commission of the crime in question. It was submitted that the prosecution has duly

established its case through the evidence of the eye witness Ravindra Rameshbhai Pawar. It was contended that there is no set rule for natural reaction laying down the manner in which a person should react to a particular situation. It was submitted that each person reacts in his own way. In the circumstances, the conduct of the eye witness cannot be said to be unnatural so as to discard his entire testimony. It was submitted that, apart from the evidence of the eye witness, another strong circumstance against the accused was in the nature of recovery of the knife used in the commission of the offence at the instance of the accused. It was further submitted that the muddamal article knife, as well as the clothes of the deceased, the samples of bloodstained earth and control earth recovered from the scene of offence as well as two slippers recovered from the scene of offence, had been sent to the Forensic Science Laboratory for analysis. Referring to the analysis report as well as the serological report forwarded by the Forensic Science Laboratory, it was submitted that human blood was found on the knife which was of group “O”, which was the same as the blood group found on the remaining articles. It was submitted that, accordingly, the prosecution has firmly established its case and has been able to connect the accused with the crime in question beyond reasonable doubt. It was, accordingly, urged that the impugned judgement and order is required to be confirmed

and the conviction of the appellant is required to be maintained.

20. We have considered the rival submissions advanced by the learned counsel appearing for the parties. We have carefully examined the record of the case and have perused the impugned judgement. We have also considered the authorities cited at the bar.

21. Insofar as the death of the deceased being a homicidal one, the same has not been disputed by the learned Advocate for the appellant. However, we have perused the evidence of PW 6 Dr. Jayendra Ratilal Modi, examined at Exh.22, who has performed the autopsy on the dead body of the deceased and has issued the Post Mortem Report Exh.23. This witness has deposed that during external examination, three incised wounds were seen, one on the chest, one on the mid-epigastric region and one on the lumbar quadrant of abdomen in the left flank. He has also deposed that all the injuries were antemortem. He has further deposed that internal examination revealed three injuries, corresponding to the external injuries. According to him the cause of death was shock following injury with sharp cutting object. He has opined that the injuries could be caused by the muddamal knife. He has proved the Post Mortem Report Exh.23. The prosecution has also examined Dr. Shakil Mohmad Jamilhussain Masu at Exh.26. This witness had examined the deceased

when he was admitted to the hospital. He has proved the Medical Certificate Exh.27. On a conjoint reading of the oral evidence of the said witness with the Post Mortem report there is no manner of doubt that the deceased Niranjan Sitaram died a homicidal death. The trial court has, therefore, rightly recorded the finding that the deceased died homicidal death and we affirm the said finding.

22. We may now examine the culpability of the appellant–accused in connection with the crime in question.

23. The prosecution has examined in all 9 witnesses. PW-1 Ramchandra Sitaram Devrukhkar, the complainant, who has been examined at Exh.9 is a brother of the deceased. He has fully supported the prosecution case and has reiterated what has been stated in the FIR Exh.10.

24. PW-2, Manoj Sitaram is another brother of the deceased who had taken the deceased to the hospital. This witness has stated that on 29.12.1997, he was working in his garage up till 7:30. Thereafter he closed the garage and went home to have his dinner. After having dinner, at about 9:00 p.m. he went to the tea stall near the vegetable market to have tea. While he was sitting there, he heard that there was a quarrel at Khokhra circle and therefore, he went to have a look. Upon going there, he

saw that his brother Niranjan had fallen down and was wounded. He had been injured on the chest. He seated him in a rickshaw and took him to the hospital where he expired at about 11:30 p.m.

25. PW-3, Ravindra Rameshbhai Pawar, who is claimed to be an eye witness has been examined at Exh.12. This witness has deposed that on 29.12.1997, after returning home from work, he had taken his meals and had gone to K.C. Pan Centre to eat masala around 9 to 10 p.m. He had taken pan masala and was standing at the pan galla, when he saw three four persons running towards Sarita Travels at Khokhra Circle. Therefore, he also went running there. He had seen Harshad Barot inflicting three four knife blows on Niranjan Marathi. Harishbhai of Sarita Travels had also come there and tried to intervene, but before that Harshad Barot fled from the scene along with the knife. Niranjan Marathi had sustained injuries in the middle of his chest and in the middle of his stomach. After about ten minutes his (Niranjan’s) brother Manoj had come and taken him to the hospital and he had gone home. On the next day he had learnt that Niranjan has expired.

26. The prosecution has examined PW-4 Anil Dhirubhai Rathod at Exh.13, as an eyewitness. However, this witness has not supported the case of the prosecution and has been declared hostile by the prosecution.

27. PW-5 Balkishanbhai Babulal Prajapati, who is a panch witness of the panchnama of the scene of offence Exh.29, has been examined at Exh.18. He has supported the prosecution case.

28. PW-7 Ambabhai Eknath Tapodhan has been examined at Exh.24. He is a panch witness of the Inquest Panchnama Exh.14 as well as the Discovery Panchnama Exh.31. He has also supported the prosecution case.

29. Lastly the prosecution has examined PW-9 Ahmedbhai Khadubhai Kureshi, Police Inspector, Amraiwadi Police Station, who is the investigating officer in the present case, at Exh.28.

30. In the background of the aforesaid facts, the point that requires to be determined in this appeal is, as to whether the evidence in the case is sufficient and reliable to hold the accused liable for the offence with which he is charged, beyond any reasonable doubt. As is evident from the evidence referred to hereinabove, the prosecution has mainly relied upon the evidence of PW-3 Ravindra Rameshbhai Pawar, claiming that he is an eyewitness who has seen the accused inflicting knife blows on the body of the accused. The evidence of the said eyewitness is sought to be corroborated by certain circumstances disclosed from other evidence in the case.

31. Then comes the other piece of evidence, which relates to discovery of a knife at the instance of the accused. This accused was arrested on 30.12.1997 at about 13:15 hours. At about 15:00 hours on the same day, according to the evidence of PW-9 - the investigating officer (Exh.28), read with that of panch witness PW7, (Exh.24), this accused showed his willingness to point out the knife used in the commission of the offence. The first part of that panchnama was made. Thereafter they were taken in a jeep to Bajrang Auto Parts Garage, from where they proceeded on foot and went to the old Municipal Muster station, where the accused is said to have recovered a knife from under a plastic on the pillar of the small gate on the left side. The accused is sought to be connected therewith, inasmuch as there were bloodstains on the knife, which were found to be human blood of group “O” i.e., the blood group of the deceased. The evidence in this regard consists of the panch witness Ambabhai Tapodhan PW-7 and the Investigating Officer PW9 read with the recitals about the same in the panchnama Exh.31 as well as the Report of the Chemical Analyzer Exh.34.

32. Therefore, the abovementioned circumstances relied upon by the prosecution require closer scrutiny. On reappraisal of the totality of the evidence, we have noted the following infirmities in the evidence of PW-3 which

raises doubts about his presence at the scene of offence.

33. Firstly it may be noted that the name of PW3 is not indicated in FIR. From the evidence of PW3, who claims to be an eyewitness it can be seen that his conduct is highly unnatural. According to this witness he had not tried to save the deceased as he was scared. He has admitted that the Khokhra Police Chowky is located in front of the Khokhra Circle, but it did not occur to him to inform the police. He has admitted that the deceased was his neighbour in the chali, and that he did not inform the family members of the deceased regarding the incident. He has admitted that he had not told his employer about the incident on the next day. He has also admitted that he had gone to the Police Station with Manoj. Though we agree with the submission advanced by the learned Additional Public Prosecutor that different people react differently to a particular situation and that there cannot be any set rule for natural conduct, we find that the conduct of this witness is far too unnatural by any set of standards. Though he is a neighbour of the deceased and has relations with him, he does not try to save him. Apart from that even after the assailant had fled from the scene, he did not hasten to take him to the hospital. After Manoj came there, he neither came to his aid in taking the deceased to the hospital nor related the incident to him. Moreover, though the

police chowky was located very nearby, he did not inform the police. Last but not least, he went back home and went to sleep. He neither told his family members regarding the incident nor informed the family of the deceased about the same. This last circumstance portrays the height of unnatural behaviour. Therefore, the conduct of this witness corrodes the credibility of his version.

34. Moreover, there are several discrepancies in his evidence. In his examination in chief he has stated that he had seen three four people running towards Sarita Travels at Khokhra circle, so he also ran to the said place and that he had seen the accused inflict blows on the deceased whereas in his cross-examination he has stated that he had seen ten to twelve people running so he also ran along with them. He has further stated that on reaching the spot he had entered through the crowd and seen the incident. In these circumstances, it is highly improbable that this witness has actually witnessed the incident.

35. We are fortified in our above view by the decision of the Apex Court in the case of ***Din Dayal v. Raj Kumar alias Raju and others*** (supra) which has been relied upon by the learned counsel for the appellant. The Court held that when the eyewitnesses closely connected with the deceased did not accompany the deceased to the hospital nor informed the

police about the incident, their conduct is unnatural. The same view has been taken by the Apex Court in the case of ***Alil Molah v. State of West Bengal*** (supra). In a recent decision, the Supreme Court in the case of State of ***Maharashtra v. Raju Bhaskar Potphode*** (2007 AIR SCW 4804) has observed that the name of the witness claimed to be an eyewitness was not indicated in the FIR. The conduct of the witness in not taking the deceased either to the hospital or police station and of going home directly was quite unnatural. Neither did he take him to the hospital, which was nearby, nor inform the police at the police station, which was also situated close by. The Court held that the conduct of the witness at the time of the incident and what he did at that time corrodes the credibility of his version.

36. Insofar as the Panchnama Exh.31 made under the provisions of section 27 of the Evidence Act is concerned, we have noticed that the panch witness who has been examined by the prosecution, has acted as a panch in relation to two panchnamas, viz. the inquest panchnama Exh.14 which was drawn on 29.12.1997 at 11;45 hours as well as the discovery panchnama Exh.31 which was drawn on 30.12.1997 at about 15:00 hours. The presence of this witness at the hospital at such a late hour on 29.12.1997 indicates that he has close relations with the deceased. From the cross examination of this witness it has come out that the complainant

had come to call him saying that he was being called at the police station. This fact strongly militates against the prosecution case. This witness was residing at a distance of 1.5 kms away from the Police Station, however, he was specially called from his house to act as panch of the discovery panchnama. The aforesaid circumstances do not inspire confidence and lead one to believe that he is a selected witness, thus, impeaching the credibility of the said witness.

37. The aforesaid view taken by us finds support in the decision of the Supreme Court in the case of State of ***U.P. v. Arun Kumar Hegde*** (2003) 2 SCC 202 wherein, in the context of the evidence of the panch witness the Court observed thus:

“In this regard, the prosecution relies on the evidence of PW 4. We have earlier noticed that PW 4 is not a resident in the immediate proximity of the house of the respondent. He belongs to the same biradari of the complainant and lives behind the house of the investigating officer, PW 9. We find no reasonable explanation, why such a person was called to be a witness to the recovery when there were any number of people available who are residents of the houses in the immediate proximity of the house of the respondent. We also notice that a large number of people were present at the time of the recovery, therefore, the prosecution should have come forward with some explanation,

why PW 4 was so selectively chosen to be the witness for the recoveries."

38. In the light of the aforesaid findings recorded by us, the evidence of the eyewitness on the basis of whose evidence the trial Court has recorded conviction cannot be said to be cogent, reliable and trustworthy. The credibility of the evidence of the PW7, the panch-witness of the discovery panchnama is also corroded. Thus, when the two main circumstances against the appellant are not found to be credible and trustworthy, the very substratum of the prosecution case falls. The attempt on the part of Mr. A.J. Desai learned Additional Public Prosecutor to convince us to the contrary has failed. When circumstances of the nature referred to hereinabove are there, and when they are sought to be utilized against the accused, it must be clearly established that the same are incompatible with his innocence. The essential onus for showing the same would obviously lie on the prosecution and it is only when that is established and established beyond any reasonable doubt that an explanation may well be required from the accused. Thus, the evidence relied upon by the prosecution cannot help the prosecution to connect the accused with the commission of the crime.

39. The learned Session Judge has not properly considered all the aspects discussed by us

hereinabove and has accepted the evidence adduced by the prosecution to be quite reliable and true.

40. The cumulative effect of the discussion that we have made hereinabove is that the evidence of the eyewitness is not very reliable and does not inspire confidence, and at any rate and in any event the evidence which is sought to corroborate that of the eyewitness in this case does not create any confidence and it does not help in any manner to connect the accused with the commission of this crime beyond any reasonable doubt. We, therefore, disagree with the findings and the conclusions arrived at by the learned Additional Sessions Judge in holding the accused guilty and sentencing him as stated hereinabove.

41. In the result, therefore, the appeal is allowed and the order of conviction and sentence passed against the appellant-accused is set aside. The accused is acquitted as the offence against him is not proved beyond any reasonable doubt. The accused is in jail. Therefore, he is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Fine, if any, paid by the accused shall be refunded to him.

[A.M.KAPADIA, J.]

[HARSHA DEVANI, J.]

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